

EQC/LJIAC EMINENT DOMAIN SUBCOMMITTEE

February 24, 2000

Final Minutes

SUBCOMMITTEE MEMBERS PRESENT

Sen. Mack Cole, Chair
Rep. Gail Gutsche, Vice Chair
Rep. Monica Lindeen
Rep. Dan McGee
Sen. Spook Stang

Rep. Bill Tash
Mr. Tom Ebzery
Ms. Julia Page
Mr. Jerry Sorensen

SUBCOMMITTEE MEMBERS EXCUSED

Rep. Kim Gillan
Rep. Jim Shockley

STAFF MEMBERS PRESENT

Krista Lee, EQC
Gordy Higgins, LJIAC
Judy Keintz, Secretary

VISITORS' LIST

Attachment #1

SUBCOMMITTEE ACTION

- Approved minutes of the January 20, 2000, meeting held in Missoula.
- Reviewed and discussed work plan topics.
- Adopted a motion to recommend to the EQC that a committee bill be requested to 1) If legally possible, consolidate all eminent domain related statutes in code such that the statutes are located in one section of code; or that references are given in code to other sections of the code dealing with the relevant matters of eminent domain and 2) to clarify current statutory language where possible, except where language must be maintained as is due to established legal precedent.
- Adopted a motion to propose an amendment to incorporate liability language into the eminent domain statutes. Such as "A property owner shall not be held liable for damages caused by or as a result of use, construction, operation, or maintenance of any facility of any public or private entity which has an easement on the owner's property for such facility except in the case of negligence on the part of the owner. Reasonable costs for defense of the property owner shall be assumed by the facility owner/operator."
- Set the next meeting date for March 23, 2000, in Billings

I CALL TO ORDER AND ROLL CALL

CHAIRMAN COLE called the meeting to order at 9:00 a.m. Roll call was noted; REP. GILLAN and REP. SHOCKLEY were excused (**Attachment #2.**)

▸ Adoption of Minutes

Motion/Vote: SEN. STANG MOVED THAT THE MINUTES OF THE JANUARY 20, 2000, EMINENT DOMAIN SUBCOMMITTEE MEETING BE APPROVED AS WRITTEN. THE MOTION CARRIED UNANIMOUSLY.

II ADMINISTRATIVE ITEMS

CHAIRMAN COLE remarked that at the next meeting in Billings on March 23rd, the first hour of the two-hour public hearing will be on the MetNet at sites in Miles City and Glasgow. The public hearing will be held from 6:30 p.m. to 8:30 p.m. REP. LINDEEN was disappointed that more sites were not being used. CHAIRMAN COLE explained that the use of the MetNet was dependent upon the Subcommittee budget.

III EMINENT DOMAIN AND RELATED ISSUES

MR. HIGGINS requested that the staff be given additional direction by the Subcommittee regarding their role in assisting the Subcommittee. He noted that the study appears to be on two tracks. One track involves an in-depth investigation of Title 70 and the eminent domain statute. The other track involves the possible effects of the eminent domain process.

The work group that is working on the handbook has agreed to look at Title 70. Using a question and answer format, information will be presented to a general audience to include the public and the legislators. This does not address issues such as liability and mitigation.

MR. SORENSEN remarked that some of the issues on the second track are covered in other forums. Perhaps these issues could be set aside or guidance could be given to a future EQC to study some of the additional issues.

REP. TASH noted the importance of the handbook to serve as a primer. Determining the secondary effects would be a monumental task because they vary from case to case. He suggested exploring the statutes on the books and considering the multiple uses concerns.

REP. LINDEEN expressed a concern regarding the issues that the citizens of Montana have been raising in regard to their problems with the eminent domain process.

MR. HIGGINS noted that the staff did not want to make assumptions for the Subcommittee and therefore the staff needed more direction from the Subcommittee.

MS. PAGE believed that it was important to review the public testimony and address the areas of concern. It may be necessary to make statutory changes. It is important to review the statute in terms of who has the right of eminent domain and how that right is being exercised.

SEN. STANG noted that a concern which has been raised at the meetings includes governmental use of eminent domain versus non-governmental use of eminent domain.

MR. EBZERY maintained that the eminent domain statute is fairly encompassing. He noted the importance of having the study address what is set out in the resolution. He also emphasized the need to move forward with the project.

CHAIRMAN COLE noted that it is important to focus on the resolution and provide information in the handbook to be used as an educational tool.

MS. LEE provided an "Issues Progress Chart", **Exhibit 1**, to assist Subcommittee members in listing findings and proposed recommendation. She noted that there were three work plan tasks that are not directly part of the eminent domain statutes and could be considered secondary issues if the committee chose to address them in this manner. These issues included: mitigation measures, standards and specifications, and liability.

MR. SORENSEN noted that the three items could be revisited at the end of the study.

Wally McRae, NPRC, was very concerned that items in the resolution were being passed over and not considered in the study. One person on the staff could develop the handbook. The thrust of the resolution was to review the law and make changes so that it would be more effective.

MR. SORENSEN emphasized the importance of the handbook due to the fact that the eminent domain law is difficult to understand.

MS. PAGE noted that the three items set out to be secondary and not part of the statute are very important issues that the Subcommittee needs to address. These are the items that are of concern to the public. The big issue for persons being condemned is the loss of control. The government retains rights to require mitigation measures but this is not the case for the private landowner. Liability is certainly in the mind of the public.

SEN. STANG noted that issues of concern to the public need to be addressed in the report. REP. GUTSCHE held that the three items set out to be secondary were a very important part of the study.

REP. LINDEEN remarked that, as a member on the working group that is preparing the handbook, it is her understanding that the staff will only include items in the statute. If these items are not in the statute, they will not be addressed in the handbook. The Subcommittee needs to address these issues and recommendations need to be included in the study.

REP. MCGEE noted that the staff was requesting direction from the Subcommittee. During the last interim, the Corrections Oversight Committee contracted an individual to consolidate sentencing statutes. These statutes were scattered throughout the code and even attorneys had difficulty with the statutes. He further noted that he would be introducing two motions later in the meeting. 1) Recommendation to the EQC for a committee bill to redraft all the eminent domain statutes to consolidate their location in the code and remove ambiguities with clear language. 2) An amendment to current eminent domain statutes to address liability issues.

MR. EBZERY was concerned about the interpretation of ambiguous and the precedent established by the courts. He also requested more information regarding liability.

REP. MCGEE maintained that the eminent domain law should recognize a limited liability on the part of the landowner for actions of the utility.

CHAIRMAN COLE summarized that Greg Petesch and MR. EVERTS could consolidate the statutes and remove ambiguities with clear language. The Subcommittee could then review the language.

REP. MCGEE noted that current staff could prepare draft legislation for the next legislative session. Alternately, this could be contracted out but the necessary funding would be a consideration.

MR. EVERTS remarked that if the EQC directed legislative staff to redraft the eminent domain laws for clarity and consolidation, this could be accomplished.

Jon Alke, Northern Border Pipeline and Montana Dakota Utilities, maintained that there is a presumption that every change in a word was intended to change the law. A massive rewrite of the eminent domain statutes would create ambiguity.

REP. MCGEE was not advocating a massive rewrite of the eminent domain statutes. Language which involves a legal precedence should not be changed.

MR. EVERTS summarized that the request was for the Code Commissioner to bring the statute to current bill drafting style and language. REP. MCGEE agreed.

IV POSSESSION OF PROPERTY BY PLAINTIFF

Mr. Nick Rottering, Montana Department of Transportation (MDOT), noted that the MDOT needed possession earlier than other private entities because they need to certify that the project is ready for bid letting. They need to show ownership to be able to gain access to Federal Highway appropriations. If the DOT couldn't take possession until after the issue of just compensation was decided, highway projects could be delayed for two to three years.

Steve Wade, Burlington Northern, maintained that the plaintiff should be able to take possession of the property once the judge has made the determination that the requirements for condemning a property have been met. Once this is established, the compensation issue is the only issue remaining.

Wally McRae, NPRC, remarked that the MDOT may need possession sooner than a for-profit entity. It is too easy for a private entity to receive a permit to condemn. A private entity can condemn for a water storage reservoir. Low quality water from the coal bed methane process is being discharged into the Powder River and the Tongue River. A private entity can impound this water. The rancher needs to be satisfied that this represents a public convenience and necessity. A special exception needs to be made for truly public uses.

REP. TASH stated that other states used utility corridors along with highway right-of-ways. He questioned whether this was under review in Montana. **Mr. Rottering** remarked that the MDOT Director has created a task force to include the utility industry and highway officials to study this situation. Certain utilities are able to occupy the right-of-way. The Department does not allow very many utilities to occupy interstate rights-of-way. These highways are access control and any entry, without the Department's permission, is considered a trespass.

MR. SORENSEN questioned whether the panel members saw private uses which provided for the public interest as having the same rights as a use by the government. **Mr. Wade** related that if the criteria was met, it would not matter whether the entity were privately owned or a government entity. **Mr. McRae** noted that the problem is in the definition. Oftentimes private entities are able to receive a certificate that states they have met the criteria for public

convenience and necessity. In many instances, he doesn't believe that to be the true situation. The Tongue River Railroad is a prime example.

REP. TASH asked whether private entities needed to meet the same test as public entities. **Mr. Wade** explained that the judge determines whether or not the action is for the public benefit. This is set out in statute.

MS. LEE noted that public uses are decided by the legislature. Private entities act as an agent of the state. This is where they receive their authority.

MR. SORENSEN requested that the Issues Progress Chart be worked on by all Subcommittee members and that this could be an agenda item for a future meeting. A substantial block of time should be set aside for full discussion and review. He also noted that in regard to the issue of possession of property by plaintiff, no further information was needed.

V REVERSION OF PROPERTY

MS. LEE noted that the MDOT's language in Title 60 is different from the language in Title 70.

Mr. Rottering remarked that due to the interstate program, a lot of property was acquired by the Department for highway purposes. It was usually acquired in fee simple. Small tracts of land were created that were no longer useful to the landowner. The Department decided to dispose of some of this property. The sale of state lands falls under Land Board jurisdiction.

Greg Hahn, MDOT, stated that the Department has approximately 1,000 tracts of land that are excess. Approximately 90% of these tracts are strip taking land, which, for example, could be approximately 10 feet wide and a quarter of a mile long. Other than the adjacent landowner, no one would be interested in this land. Approximately 10% of the tracts are stock pile or maintenance sites.

REP. TASH questioned whether state highway abandonment caused by realignment was covered in statute. **Mr. Hahn** noted that on a lot of the older highways, the Department may have had an easement. The Department would discharge their interest in the easement and it would revert to the landowner from whom the Department acquired the easement. This would follow the successor-in-interest of the title. If the Department acquired the property by fee interest, they would need to hold a public auction. If the tract is valued under \$2,500, the Department is able to sell this land to anyone. If it is not sold, they contact the adjacent landowners. If more than one landowner is interested, a public auction is held. If the tract is valued over \$2,500, they must go to the public auction process.

REP. MCGEE questioned the cost of a public auction. **Mr. Hahn** believed it would be less than \$5,000. During the last legislative session, the Department asked that the \$2,500 limit be increased, but the legislation did not pass. The \$2,500 amount was based on the fact that this is the threshold within which the Federal Highway Administration (FHWA) allows the Department to acquire property without a formal appraisal. The FHWA limit has now been raised to \$10,000.

MS. LEE remarked that when a fee simple interest is held, under the eminent domain statutes, the original land owner, or their successor-in-interest, must be given the opportunity to meet the highest bid. Under the MDOT statutes, this does not apply. **Mr. Hahn** added that if they were to exchange property, they need to go back to the successor-in-interest.

Jim Lewis, MDOT, remarked that § 60-4-201(2), MCA requires the owner from whom the interest was originally acquired by the state or the successor-in-interest has the right to require the department to offer the land for sale. This is different from Title 70 in that the landowner must act prior to the bid. The reason there is a difference between Title 60 and Title 70 is due to the federal highway matching funds grant. This is also a good reason why the eminent domain statutes should not be consolidated.

REP. LINDEEN asked that the Subcommittee be provided with the federal conditions of compliance.

Mr. Lewis stated that this information would be found in the Code of Federal Regulations. He further noted that many of the provisions of Title 60 were passed in 1965 and the Code of Federal Regulations has subsequently been changed.

Mr. Rottering further explained that the federal highway system has been reorganized. The nearest legal office of the FHWA is in San Francisco. It is important that the state eminent domain statutes are not changed in a manner that would jeopardize federal highway funds.

REP. MCGEE maintained that the codes could be consolidated so that the language contained in the various sections would be left intact. **Mr. Lewis** believed that was possible theoretically. The problem is the manner in which the legislature passes legislation. He added that Montana could adopt the Model Eminent Domain Code.

VI HISTORICAL USE UPDATE

MS. LEE provided an update entitled "Historical Use of Eminent Domain in Montana", **Exhibit 2**. She further noted that three more entities had provided information.

MS. PAGE noted that a paragraph should be added which states that eminent domain is used all the time and it brings people to the table for negotiation purposes. MR. SORENSEN felt that a paragraph of that type could wait until all the information was received.

VII FEDERAL/STATE RELATIONSHIP

MS. LEE noted that a question was raised regarding state interaction in federal condemnation. For the federal government to condemn land, it is necessary for federal legislation to be passed. Under the acquisition language in the federal legislation, condemnation must be listed as a method of acquiring the property. If condemnation language is not included in the acquisition language, then public land can be changed to a different use, but private land cannot be condemned. If condemnation is included in the acquisition language, then private lands can be condemned. Under current federal law, the funds to provide just compensation to condemnees must also be appropriated by Congress. There has been discussion that President Clinton could make the Missouri Breaks a national park. Based on her research, this could be accomplished involving the public lands on the Missouri River. However, for this to include private lands, the legislation would need to state that private lands could be condemned and the funds would also need to be appropriated. Additional handout, "An Interstate Natural Gas Facility on my Land?", **Exhibit 3.**

MR. SORENSEN raised a concern regarding the interstate commerce clause. He questioned whether an entity denied the right of eminent domain could hold that this was against the federal standards for interstate commerce. MR. HIGGINS noted that the issue of interstate commerce was broad. He recommended that this issue be narrowed in scope before staff researched it.

VIII PUBLIC USES

MS. LEE provided a handout, "Arizona, Idaho, Nevada, and Montana Public Uses Enumerated", **Exhibit 4.** She reviewed the public uses enumerated in Montana statutes, 70-30-102, MCA, Parts (1) to (16) as set out in the exhibit.

MS. PAGE noted that some of the language is archaic. Under (4) she questioned whether anyone had the right to condemn land to put in "wharves, docks, piers, chutes, booms, etc." REP. TASH noted that the site must possess a public use demonstrable to the district court as the highest and best use of the land.

MR. EBZERY added that the action must be for certain uses to qualify as a public use and this would include public transportation, and supplying mines, mills and smelters, etc.

MR. SORENSEN questioned whether under item (6), “private roads leading from highways to residences or farms;” it would be necessary for the residence to be established. REP. MCGEE remarked that the language did not state that the residence was established. Staff will further review this matter.

It was noted that under (16), although eminent domain for strip mining was no longer allowed, requirements for reclamation were still necessary. In some instances the land may be necessary to reclaim for the actual strip mining. The land acquired through eminent domain could not be used to seize the mineral but only for reclamation purposes.

MS. PAGE remarked that recent technology involved in gold recovery methods allowed for mining huge quantities of materials and spreading the materials on the surface. She questioned whether eminent domain should be allowed for this process, which is very surface intensive..

MR. EBZERY noted that the two companies involved in gold recovery in the state that are still under operation should be contacted regarding this issue.

MS. LEE further reviewed the statutes listed in Appendix A of the exhibit.

MR. SORENSEN questioned whether the DNRC could condemn private land for access to state trust land. **Marylee Norris, DNRC Trust Lands**, noted that there is a question about whether this can be done for recreational purposes.

MR. SORENSEN further questioned whether state lands could be condemned. **Ms. Norris** stated that the Land Board could consider easements for purposes specifically defined in the statutes.

CHAIRMAN COLE requested Subcommittee members to note areas of concern in the public use statutes.

MS. LEE recapped that at the next Subcommittee meeting public uses will be discussed further and Subcommittee will note possible changes and updates. Staff will research the private road/public use issue. Mining companies will be contacted and invited to attend the Billings meeting. Definitions will be sought for “railroad authority”, “common carrier” and “works”.

IX LIABILITY

MR. HIGGINS provided a handout on liability considerations, **Exhibit 5**. He noted that the easement holder is liable for damage or injury to the servient estate or tenement. The holder of the easement is liable for damage caused to the owner of land that the easement crosses or

occupies. The exceptions are the wanton and negligent action of someone other than the easement holder. He has not found any instances where a landowner was held liable for a spill that the landowner did not knowingly cause.

Mr. Alke remarked that he represented a company that caused two leaks to the Yellowstone Pipeline. The pipeline paid for all the remediation costs. The pipeline then sued the company over the cause of the accident. The petroleum that leaks is a trespass and is the liability of the owner of the pipeline.

Mr. McRae emphasized that the landowner has numerous concerns. If the landowner needs to cross a utility corridor, the resulting negotiations usually make it necessary for the landowner to assume the liability.

MR. SORENSEN requested that staff review the possibility of “hold harmless” language being added to the statute.

X USE OF INTEREST TAKEN THROUGH CONDEMNATION ACTION

MS. LEE provided a handout entitled, “Use of Interest Taken Through Condemnation Actions”, **Exhibit 6**. Multiple use of easements depends on negotiations or the document associated with the easement or right-of-way. She noted for example that the Montana Power Company bought an easement for a natural gas pipeline near Livingston. In their negotiations, they reserved the right to install an additional pipeline and paid the landowner accordingly. Legally, the person owning the easement must pay for every use on the easement. A company cannot resell a portion of the easement unless the original property owner is compensated. If there is going to be a new use within the easement, there needs to be a three way agreement whereby the original easement holder needs to agree with the second easement holder and the landowner.

Mr. McRae noted that companies that are condemning want a fee simple arrangement. He noted that under 69-14-552, the company could add items to the easement without compensating the landowner. MS. LEE maintained that if the holding is anything but fee simple, it could only be used for the purposes noted in the agreement.

Mr. McRae stated that telephone lines were added after the railroads were built.

MR. EBZERY noted that in the Cenex case, the Supreme Court held that the fiber optics that were added were for the use of the pipeline. An easement is tied to the uses noted in the agreement.

Mr. McRae raised a concern about the Tongue River Railroad's insistence on receiving fee title. **Mr. Ebzery** noted that the fee title arrangement was necessary for purposes of financing.

XI DUE PROCESS

MR. HIGGINS provided a handout on due process, **Exhibit 7**. There are two types of due process to include procedural and substantive due process. Procedural due process involves a question that should be addressed. This relates to a fair process to ensure that one's property is not taken without a fair hearing and notification process. The statutes offer both the notification and hearing process. The Subcommittee needs to consider whether this is adequate. The laws governing the types of actions that a state or a government approves need to have some benefit. Laws cannot be arbitrary or capricious. Substantive due process relates to public uses. The legislature has decided the public uses. If the projects that result from those uses are for the public benefit, substantive due process rights would not be harmed.

MS. PAGE related that substantive due process is a main concern. One of the places where the landowner has concerns about the process involves whether or not the greatest public good with the least private injury is addressed. Will the landowner receive a fair hearing on this issue? This is settled before compensation is addressed and is the part of the eminent domain law that is the weakest.

MR. HIGGINS maintained that substantive due process is included in the eminent domain process when considering the greatest public good with the least private injury. If there is a question whether a public use should or should not be enumerated in the statute, the Subcommittee needs to make this point. If the state or a private entity who has the power to condemn land believes that the procedural due process provisions established in statute are unfair, this should be reviewed.

Mr. Lewis remarked that in §70-30-206(4) the language states that after a complaint is filed and prior to the issuance of a preliminary order of condemnation, all parties shall proceed as expeditiously as possible and without prejudicing any party's position in all aspects of the preliminary condemnation proceeding including discovery and trial. This is where the landowner is able to contest the public interest/private injury issue. Due process is provided in the eminent domain statutes.

Mike Foster, Montana Contractors Association, stated that during the last legislative session there was a concern that the new highway construction funding would run into problems with the process of negotiating with landowners. This funding was increased by \$100 million per year for each of the six years of the program. One bright spot in Montana's economy is the construction industry. A long drawn out negotiating procedure may cause the state to lose highway funding. The statutes do not set out a clear time line for due process. Perhaps this is something that

could be reviewed. Contractors deal very directly with landowners and that relationship is very important as the project progresses. The Department is currently keeping up with the requirements for obligating the funds.

REP. GUTSCHE remarked that comments received from the landowners in regard to the due process issue include that it is unfair for the condemnor to take possession of the land before the just compensation issue has been negotiated.

MR. HIGGINS suggested that the Subcommittee may wish to further review specific issues in the notification hearing and the process, including the time line.

XII BURDEN OF PROOF

MR. HIGGINS provided a handout entitled, "Burden of Proof Pertaining to the Exercise of Eminent Domain", **Exhibit 8**. He noted that under §70-30-111 it suggests that the plaintiff must show by a preponderance of the evidence that the public interest requires the taking based on certain findings. The interest sought must be necessary for the completion of the project. An attempt needs to be made to negotiate for the right to obtain the interest.

REP. LINDEEN remarked that if the level of burden of proof was changed, this would not necessarily mean that the process would need to take longer. The evidence presented would be different.

Mr. Lewis maintained that if the burden of proof was raised it would be an invitation to landowners to contest necessity. It would be more difficult for the MDOT to prove necessity. This will result in more trials and projects will take more time.

REP. LINDEEN stated that the current level of proof would then discourage landowners from challenging a project. **Mr. Lewis** disagreed and added that landowners do challenge projects on a regular basis.

SEN. STANG questioned the level of burden of proof used by Idaho and Nevada. MR. HIGGINS noted that he has not researched this issue but believes that the preponderance of the evidence is a fairly standard burden. He will further research this matter.

Mr. Lewis noted that Montana requires that the condemning authority pay attorneys fees. Idaho and Nevada do not have this requirement. If the landowner takes the MDOT to trial on the preliminary order of condemnation and wins, the landowners attorneys fees are paid. Florida is the only other state that requires the condemnor to pay attorneys fees.

XIII RIGHT OF REENTRY

MS. LEE provided a handout addressing the right of reentry, **Exhibit 9**. This report references two sections of code dealing with reentry to include §70-16-401 and 402. She noted that the right of reentry is probably included in every easement agreement.

XIV INSTRUCTIONS TO STAFF, NEXT MEETING DATE

MS. LEE stated that at the next meeting, two hours could be dedicated to review the issues progress chart. The Subcommittee could review findings and draft recommendations.

The next meeting will be held at the MSU Billings Campus, Student Union Building, on March 23rd at 11:00 a.m. The public hearings will be from 6:30 p.m. to 8:30 p.m.

Motion: REP. MCGEE MOVED THAT THE SUBCOMMITTEE RECOMMEND TO THE EQC THAT A COMMITTEE BILL BE REQUESTED TO 1) IF LEGALLY POSSIBLE, CONSOLIDATE ALL EMINENT DOMAIN RELATED STATUTES IN CODE SUCH THAT THE STATUTES ARE LOCATED IN ONE SECTION OF CODE OR THAT REFERENCES ARE GIVEN IN CODE TO OTHER SECTIONS OF THE CODE DEALING WITH THE RELEVANT MATTERS OF EMINENT DOMAIN AND 2) TO CLARIFY STATUTORY LANGUAGE WHERE POSSIBLE EXCEPT WHERE LANGUAGE MUST BE MAINTAINED AS IS DUE TO ESTABLISHED LEGAL PRECEDENT.

REP. MCGEE remarked that the public uses for eminent domain are included in 12 titles of the code.

MR. EBZERY requested that the motion include the term "if legally possible". REP. MCGEE agreed to add the language to his motion.

SEN. STANG noted that if a Committee bill were drafted, the public would still have a chance to comment.

Vote: THE MOTION CARRIED.

Motion: REP. MCGEE MOVED TO PROPOSE AN AMENDMENT TO THE APPROPRIATE STATUTE DEALING WITH EMINENT DOMAIN TO ADDRESS THE ISSUE OF LIABILITY. A PROPERTY OWNER SHALL BE HELD HARMLESS FOR DAMAGES CAUSED BY OR AS A RESULT OF THE USE, CONSTRUCTION, OPERATION, OR MAINTENANCE OF A FACILITY OF ANY PUBLIC OR PRIVATE ENTITY WHICH HAS AN EASEMENT ON THE OWNERS PROPERTY FOR SUCH FACILITY EXCEPT IN THE CASE OF NEGLIGENCE ON THE PART OF THE OWNER. REASONABLE COSTS FOR DEFENSE OF THE PROPERTY OWNER SHALL BE ASSUMED BY THE FACILITY OWNER OR OPERATOR.

Discussion

REP. MCGEE explained that if a property owner was involved in the condemnation process or entered into an agreement and an easement was granted, the property owner should be held harmless unless the property owner is negligent or performs a wanton act of violence to the facility. He further noted that his motion was to have the staff research the matter and present information to the Subcommittee at the next meeting.

MR. EBZERY noted that this amendment should only apply to the eminent domain statutes but not for private transactions between parties.

Vote: THE MOTION CARRIED.

Don Allen, WETA, requested that the handouts be provided to interested parties prior to discussion by the Subcommittee. This information is very important to the private sector.

XV ADJOURNMENT

There being no further business, the meeting was adjourned.

SEN. COLE, Chairman